ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	
POLICY AND RULES CONCERNING THE INTERSTATE, INTEREXCHANGE MARKETPLACE	CC Docket No. 96-61
IMPLEMENTATION OF SECTION 254(g) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED	

PETITION FOR RECONSIDERATION/CLARIFICATION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, hereby respectfully urges the Commission to clarify one element, and reconsider two other elemente of its Second Report and Order in order to avoid adversely impacting the interexchange resale community and the small to mid-sized resale carriers that comprise the rank and file of TRA's membership.

TRA has been an active participant in this proceeding and an ardent opponent of mandatory detariffing. In comments and reply comments filed in this docket, TRA expressed concern that detariffing of any kind -- *i.e.,* mandatory or permissive -- would render meaningless the Commission's resale requirements and its associated "general availability" and non-discrimination policies. With respect to "mandatory," as opposed to "permissive," detariffing, TRA expressed the further concern that mandatory detariffing would eliminate a cost-effective and efficient means of providing long distance service without achieving any countervailing benefit for consumers; indeed, consumers, TRA pointed out, would ultimately bear the additional transactional and other costs occasioned by mandatory detariffing.

In the Order, the Commission may have addressed TRA's concern that detariffing would undermine the Commission's resale, "general availability," and non-discrimination policies. TRA seeks clarification of this matter here. The Order, however, did not address TRA's concerns regarding the adverse business impacts of mandatory detariffing on nondominant IXCs generally and smaller carriers in particular. TRA will ask the Commission herein to consider a limited

form of tariffing -- *i.e.,* a carrier-administered electronic tariff filing system like that proposed by the Commission in CC Docket No. 96-187 -- which would remedy this problem without imposing undue burdens on the Commission. TRA will further urge the Commission herein to reconsider its assessment of filing fees on IXCs which are compelled to withdraw tariffs currently on file with the Commission.

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PETITION FOR CLARIFICATION/RECONSIDERATION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby respectfully petitions the Commission to clarify/reconsider selected portions of its Second Report and Order, FCC 96-424, released by the Commission in the captioned docket on October 31, 1996 (the "Order").[1] In the Order, the Commission, among other things, adopted a policy of "mandatory detariffing" for the domestic interstate offerings of nondominant interexchange carriers ("IXCs"), in an exercise of the expanded "forbearance authority" codified in Section 401 of the Telecommunications Act of 1996 ("1996 Act").[2] TRA urges the Commission to clarify

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[1] The Order was published in the Federal Register on November 22, 1996, at 61 Fed.Reg. 59,340.

[2] Pub. L. No. 104-104, 110 Stat. 56, § 401 (1996); 47 U.S.C. § 160.

one component, and reconsider two other components of the Order in order to avoid adversely impacting the interexchange resale community and the small to mid-sized resale carriers that comprise the rank and file of TRA's membership.

I.

INTRODUCTION

A trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, local, wireless, enhanced and internet services.

TRA's resale carrier members serve generally small to mid-sized commercial, as well as residential, customers, providing such entities and individuals with access to rates generally available only to much larger users. TRA's resale carrier members also offer small to mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally reserved for large-volume corporate users.

Not yet a decade old, TRA's resale carrier members -- the bulk of whom are small to mid-sized, albeit high-growth, companies[3] -- nonetheless collectively serve millions of residential and commercial customers and generate annual revenues in the billions of dollars.[4] The emergence and dramatic growth of the resale industry over the past five to ten years has produced thousands of new jobs and myriad new commercial opportunities. In addition, TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

As the Commission is aware, TRA has been an active participant in this proceeding and an ardent opponent of mandatory detariffing. TRA explained in great detail in its comments and reply comments its objections to this policy. To quickly capsulize these

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[3] President Clinton could have been referring to TRA's resale carrier members when he noted in The State of Small Business: A Report of the President 1994 (at page 7), "a great deal of our Nation's economic activity comes from the record number of entrepreneurs living the American Dream. . . . I firmly believe that we need to keep looking to our citizens and small businesses for innovative solutions. They have shown they have the ingenuity and creative power to make our economy grow; we just need to let them do it."

[4] The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of $10 million and employs in the neighborhood of 50 people. Among TRA's resale carrier members, roughly 30 percent have been in business for less than three years and over 80 percent were founded within the last decade. And while the growth of TRA's resale carrier members has been remarkable, the large majority of these entities remain relatively small. Nearly 25 percent of TRA's resale carrier members generate revenues of $5 million or less a year and less than 20 percent have reached the $50 million threshold. Seventy-five percent of TRA's resale carrier members employ less than 100 people and nearly 50 percent have work forces of 25 or less. Nonetheless, more than a third of TRA's resale carrier members provide service to 25,000 or more customers.

objections, TRA expressed concern that detariffing of any kind -- *i.e.,* mandatory or permissive -- would render meaningless the Commission's resale requirements and its associated "general availability" and non-discrimination policies. With respect to "mandatory," as opposed to "permissive," detariffing, TRA expressed the further concern that mandatory detariffing would eliminate a cost-effective and efficient means of providing long distance service without achieving any countervailing benefit for consumers; indeed, consumers, TRA pointed out, would ultimately bear the additional transactional and other costs occasioned by mandatory detariffing.

In the Order, the Commission may have addressed TRA's concern that detariffing would undermine its resale, "general availability," and non-discrimination policies. TRA seeks clarification of this matter below. The Order, however, did not address TRA's concerns regarding the adverse business impacts of mandatory detariffing on nondominant IXCs generally and smaller carriers in particular. TRA will ask the Commission below to consider a limited form of tariffing which would remedy this problem without imposing undue burdens on the Commission. TRA will further urge the Commission below to reconsider its assessment of filing fees on IXCs which are compelled to withdraw tariffs currently on file with the Commission.

II.

ARGUMENT

A. The Commission Should Clarify That Carriers Must Make Existing Contract-Based Service Arrangements, As Well As All Other Service Offerings, Generally Available To All Qualified Customers Upon Request

In the Order, the Commission, at the same time it barred the filing of tariffs for the domestic interstate offerings of nondominant IXCs, directed such carriers to "make information on current rates, terms and conditions for all of their interstate, domestic,

interexchange services available to the public in an easy to understand format and in a timely manner."[5] The Commission made clear that this requirement applied to "all . . . interstate, domestic, interexchange services,"[6] including contract-based arrangements.[7] The Commission further made clear that such information must be made available to resale carriers;[8] indeed, in adopting this requirement, the Commission specifically referenced the need for resale carriers to compare carrier service offerings.[9] The only limitation recognized by the Commission is that the information regarding rates, terms and conditions that carriers must make available need not be *more detailed* than that "currently provided in tariffs, in particular in contract tariffs.[10]

As noted above, the requirement -- now codified in Section 42.10 of the Commission's Rules[11] -- that long distance network providers make available to resale carriers information concerning the current rates, terms and conditions for all of their detariffed interstate, domestic, interexchange services addresses at least in part TRA's concern that detariffing will undermine the Commission's resale, "general availability" and non-discrimination requirements. Left unclear, however, is whether carriers must continue to make all service offerings, including contract-based arrangements, available to all qualified entities, upon request. Because the Order

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5 Order, FCC 96-424 at ¶ 84.

6 Id. at ¶ 85.

7 Id. at ¶ 84.

8 Id. at ¶¶ 27, 85.

9 Id.

10 Id. at ¶ 84.

11 47 C.F.R. § 42.10.

repeatedly asserts that the requirements of Sections 201 and 202[12] will continue to apply and be vigorously enforced,[13] it is clear that the Commission's resale and non-discrimination requirements will survive detariffing. And while it logically follows that existing "general availability" requirements will also continue to apply, the Order does not expressly declare this to be the case.

Obviously, this is a matter of critical concern to TRA and its resale carrier members. As TRA has previously explained, the relationship between resale carriers and their underlying network providers is at best an awkward one, given that resale carriers are not just large customers, but aggressive competitors, of their network providers. While resale carriers, like large corporate and other major users of telecommunications services, provide very substantial revenues to network providers, unlike large corporate and other major users, resale carriers use whatever "price breaks" they secure as a result of their large volumes of usage to provide rate reductions to the small and mid-sized accounts that would otherwise provide the network providers with their highest "margins." The greater the market share of the network provider, the greater the degree of awkwardness that permeates its relationship with resale carriers.[14]

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[12] 47 U.S.C. §§ 201, 202.

[13] *See, e.g.,* Order, FCC 96-424 at ¶¶ 21, 36, 39, 40, 84.

[14] As described by the Commission in a comparable circumstance, "[n]egotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires;" rather, "[u]nder section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 55 (released August 8, 1996), *pet. for rev. pending sub nom.* Iowa Utilities Board v. FCC, Case No. 96-3321 (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon. pending* ("Local Competition First Report and Order"). Given the "inequality of bargaining power, . . . rules that have the effect of equalizing bargaining power," such as resale obligations and "general availability" requirements remain necessary. Id.

The largest facilities-based carriers, accordingly, often deny resale carriers access to the superior service offerings and preferred price points they make available to large corporate and other major users with commensurate (and in far too many instances, substantially lower) traffic volumes. Resale carriers have been able to overcome such "refusals to deal" by taking "off-the-shelf" customer-specific large corporate offerings which prior to mandatory detariffing, had been filed as tariffs. If such contract-based service offerings must still be made available to resale carriers even though no longer filed as tariffs, resale carriers will still be able (at least theoretically) to counter refusals by large facilities-based carriers to negotiate rates, terms and conditions commensurate with their volume levels.

Accordingly, TRA strongly urges the Commission to clarify that nondominant IXCs must continue to make all services, including contract-based services, available to all qualified entities upon request and that resale carriers must be afforded nondiscriminatory access to such service offerings. In initially authorizing contract-based service arrangements, the Commission recognized that contract carriage could "have an adverse impact on resellers."[15] To address this point, it required that contract-based offerings must be "made available to all similarly-situated customers."[16] Moreover, the Commission declared unlawful "restrictive eligibility requirements . . . [that provided] pretexts for unreasonably discriminating among

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[15] Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880, ¶¶ 112, 115 (1991) ("First Interexchange Competition Order"), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993) ("Second Interexchange Competition Order"), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995) ("1995 Interexchange Reconsideration Order") (collectively, the "Interexchange Competition" proceeding); AT&T Communications, Revisions to Tariff F.C.C. No. 12, 4 FCC Rcd. 4932, ¶ 64 (1989) ("Tariff 12 Order"), *recon.* 4 FCC Rcd. 7928 (1989) ("Tariff 12 Reconsideration Order") *remanded* MCI Telecommunications Corp. v. FCC, 917 F.2d 30 (D.C.Cir. 1990), *on remand* 6 FCC Rcd. 7039, 7050-52 (1991) ("Tariff 12 Remand Order").

[16] First Interexchange Competition Order, 6 FCC Rcd. 5880 at ¶ 115.

customers" and directed carriers to demonstrate compliance with its pro-competitive resale policies.[17]

These safeguards are still necessary today and should be incorporated into the Commission's mandatory detariffing rules. TRA urges the Commission to clarify that they have been so included.

B. The Commission Should Provide For A Permissive Carrier-Administered Electronic Tariff Filing System Which Would Facilitate The Cost-Effective, Efficient Provision Of Long Distance Service

In the face of near universal opposition to its proposal to adopt a mandatory, as opposed to a permissive, detariffing policy, the Commission nonetheless denied nondominant IXCs the option to tariff their domestic, interstate service offerings. The carrier community, including the overwhelming majority of IXC commenters,[18] a number of local exchange carrier ("LEC") commenters,[19] and competitive access provider ("CAP") and competitive local exchange carrier ("CLEC") commenters,[20] was virtually unanimous in its opposition to mandatory

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[17] Tariff 12 Order, 4 FCC Rcd. 4932 at ¶ 64.

[18] Opponents included the largest carriers (*e.g.*, MCI Telecommunications Corporation ("MCI"), AT&T Corp. ("AT&T"), Sprint Corporation ("Sprint") and WorldCom, Inc. d/b/a LDDS WorldCom ("WorldCom")), other facilities-based providers (*e.g.*, LCI International Telecom Corp. ("LCI"), Cable & Wireless, Inc. ("C&W"), Frontier Corporation ("Frontier"), and Eastern Telephone Systems, Inc. d/b/a Eastern Tel Long Distance Service, Inc. ("Eastern Tel")), resale carriers (*e.g.*, Excel Telecommunications, Inc. ("Excel"), Ursus Telecom Corp. ("UTC"), Business Telecom, Inc. ("BTI"), and General Communication, Inc. ("GCI")) and trade associations and other groups representing IXCs (*e.g.*, Competitive Telecommunications Association ("CompTel"), America's Carriers Telecommunications Association ("ACTA") and the Casual Calling Coalition).

[19] *See, e.g.*, Comments of Ameritech, Pacific Telesis Group ("PacTel"), U S West, Inc. ("U S West"), and GTE Service Corporation, *et al.* ("GTE").

[20] *See, e.g.*, Comments of MFS Communications Company, Inc. ("MFS"), Winstar Communications, Inc. ("Winstar").

detariffing. The States, including regulatory authorities and attorneys general, were equally adamant in their opposition.[21] And consumer groups and other representatives of residential and small business users all registered their opposition as well.[22] Even some of the large corporate users, who are likely to be the only net beneficiaries of a mandatory detariffing policy, attempted to limit their support for mandatory detariffing in an effort to minimize adverse impacts on other consumer groups and industry segments.[23] In short, commenters which supported mandatory detariffing were few and far between.

In light of this overwhelming opposition, TRA urges the Commission to reexamine its rationale for adopting a mandatory detariffing policy and to explore vehicles by which non-dominant IXCs could be afforded the opportunity, without the obligation, to tariff their domestic interstate service offerings. Simply put, the Order's rationale for rejecting permissive detariffing is wholly unconvincing and unlikely to survive appellate scrutiny.[24] Moreover, at least some of the concerns expressed by the Commission can be better dealt with through vehicles other than mandatory detariffing.

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[21] *See, e.g.,* Comments of Consumer Advocate Division of the Office of the Tennessee Attorney General ("Tennessee"), the State of Alaska ("Alaska"), the Louisiana Public Service Commission ("LPSC"), and the Pennsylvania Public Utility Commission ("PaPUC").

[22] *See, e.g.,* Comments of Consumer Federation of America and Consumers Union ("Consumer Federation"), Office of the Ohio Consumers' Counsel ("Ohio Consumers' Counsel"), Telecommunications Research and Action Center ("TRAC"), and The National Association of Development Organizations, Paraquad, United Homeowners Association, National Hispanic Council on the Aging, Consumers First and National Association of Commissions for Women (collectively, "NADO").

[23] *See, e.g.,* Comments of Ad Hoc Telecommunications Users Committee ("Ad Hoc"), UTC, The Telecommunications Association ("UTC"), and Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (the "Broadcast Interests").

[24] *See, e.g.,* MCI Telecommunications Corp. v. FCC, Case No. 96-1459 (D.C. Cir. Dec. 2, 1996).

The Order asserts that "not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment."[25] Moreover, the Order contends that "permitting nondominant interexchange carriers to file tariffs on a voluntary basis would undermine several of these benefits, and therefore is not in the public interest."[26] The Order, however, fails to substantiate any of these claims.

For example, the Order suggests that tariffing "impedes vigorous competition" by removing carriers' incentives to discount, by hindering the ability of carriers to respond to competition, by imposing costs on carriers introducing new offerings, and by preventing consumers from securing service arrangements tailored to their unique needs. Permissive tariffing using a carrier-administered electronic tariff filing system such as that advocated by TRA below and which provides for ready filing and the immediate effectiveness of tariff revisions would have none of these effects. Under such a tariffing scheme, carriers could react rapidly and effectively without appreciable costs, delays or constraints to provide customers with whatever service offerings they desired. The market would drive pricing, competitive responses and service diversity.

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[25] Order, FCC 96-424 at ¶ 52.

[26] Id.

The Order further opines that in a detariffed environment, whatever tacit pricing coordination exists would be rendered more difficult because "price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location."[27] To the extent that the three or four largest IXCs desire to engage in tacit pricing coordination, the additional resources that would be required to retrieve information from an additional one or two locations would likely not represent an insurmountable impediment. Moreover, under permissive tariffing, carriers would likely file only selected tariffs; indeed, the Commission might be able to impose reasonable limits on the type of tariffs that could be filed in a permissive detariffing environment. Certainly, the Order's bizarre speculation that IXCs who wished to engage in tacit price collusion would use permissively-filed tariffs -- easily the most visible possible vehicle -- to send pricing signals lacks any foundation in reality.[28]

The Order's assertion that the elimination of tariffs is also necessary to prevent carriers from refusing to negotiate with customers based on the Commission's tariff filing and review process is no more compelling.[29] Under permissive tariffing, there simply would be no "tariff filing and review processes" behind which carriers could hide. Hence, to the extent that "carriers may become more responsive to customer demands and offer a greater variety of price and service packages that meet their customers' needs" following mandatory detariffing, the same is true with respect to permissive detariffing.[30]

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[27] Id. at ¶ 53.

[28] Id. at ¶ 61.

[29] Id. at ¶ 54.

[30] Id.

Nor is the Order correct that mandatory detariffing is the only means by which to avoid the filed-rate doctrine.[31] TRA does not take this matter lightly, given that its resale carrier members have been victimized more than any other customer group by application of the filed-rate doctrine. In TRA's view, however, permissive tariffing does not implicate the filed-rate doctrine. First, the filed-rate doctrine is predicated upon a requirement that carriers include in their tariffs all of the rates they charge their customers.[32] Hence, the filed-rate doctrine would have no applicability to tariffs voluntarily filed. Second, the Commission could exercise its forbearance authority to relieve carriers of any obligation to charge only tariffed rates under Section 203(c).[33] And third, as noted above, the Commission likely could impose reasonable limits on the type of tariffs that could be filed in a permissive detariffing environment, prohibitting, for example, the filing of contract-based tariffs.

The Order's attempt to address the costs and inefficiencies mandatory detariffing would cause nondominant IXCs is also weak. For example, with respect to "casual calling," the Order suggests in an offhanded manner that "a carrier could seek recovery under an implied-in-fact contract theory" or that "a casual caller who uses a carrier's access code to obtain service from the carrier may be deemed to have accepted an outstanding offer from the carrier to provide casual calling service, and therefore be obligated to pay for any services rendered" or that [b]y providing billing or payment information . . . and completing use of the telecommunications service, casual callers may be deemed to have accepted a legal obligation to pay for any such

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[31] Id. at ¶ 55.

[32] Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 132 (1989).

[33] 47 U.S.C. § 203(c).

services rendered."[34] Theories which may or may not be upheld in court are hardly adequate responses to the serious issues raised by nondominant IXCs regarding the obligation of the calling party to pay for telecommunications services provided, the structure of the carrier/customer relationship and the particular terms and conditions which govern that carrier/customer relationship, including the extent of the carrier's liability for dropped calls.

Likewise, the Order's out-of-hand rejection of carrier showings that mandatory detariffing would produce additional costs, resource drains and inefficiencies does not withstand scrutiny. First, the Order's contention that carriers would not be burdened by the obligation to provide customers with advance notice of all price changes because "carriers have widely advertised the terms and availability of [optional calling plans]" strongly suggests that the authors of the Order were only considering the impact of mandatory detariffing on the largest IXCs.[35] This view is confirmed by the Order's summary dismissal of concerns that mandatory detariffing would "disproportionately burden small, nondominant interexchange carriers" on the basis that not all of the "increased administrative costs that carriers may incur initially as a result of a shift to a detariffed environment are likely to be fixed."[36]

Nor has the Order demonstrated that there is any purpose to be served by conforming carrier/customer relationships in the interexchange industry to those in other markets. After all, there are few, if any, industries that have characteristics comparable to those of the interexchange industry. Thus, for example, IXCs have a common carrier obligation to serve all

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[34] Id. at ¶ 58.

[35] Id. at ¶ 56.

[36] Id. at ¶ 57.

comers and to do so generally prior to receipt of payment for the requested service. Individual IXCs serve hundreds of thousands and sometimes millions of customers whose accounts are generally small. Because tariffs have governed the relationship between IXCs and their customers, there is precious little in the way of rules and regulations governing that carrier/customer relation beyond requirements imposed on the carrier to act in a just and reasonable manner. These and other characteristics unique to telecommunications undermine the value of comparisons of the interexchange industry with other industries. Moreover, it is as a result of many of these same characteristics that mandatory detariffing would generate substantial additional costs and burdens for IXCs. And while the Order may attempt to side step this issue by seeking to trivialize these concerns, the record clearly documents the adverse impact of mandatory detariffing on IXCs.

What then is the answer? TRA submits that an electronic filing system such as that proposed by the Commission in implementing Section 402(b)(1)(A) of the 1996 Act would not only address the concerns of the nondominant IXC community, but would resolve the issues raised in the Order and relieve the Commission of the better part of its duties as a repository of domestic interstate interexchange tariffs. Section 402(b)(1)(A) of the 1996 Act requires the Commission to streamline LEC tariff filing requirements.[37] In a Notice of Proposed Rulemaking issued for this purpose, the Commission proposed to establish a "tariff electronic filing system."[38] In structuring this system, the Commission identified as one approach an arrangement in which

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[37] 47 U.S.C. § 214(a)(3).

[38] Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996 (Notice of Proposed Rulemaking), CC Docket No. 96-187, FCC 96-367, ¶¶ 21 - 22 (released September 6, 1996).

each carrier would be "given the responsibility of posting, managing, and maintaining its electronic file of tariffs."[39] As further explained by the Commission: "each carrier would be assigned a portion of the space on the electronic filing system, with its own security access code for entry of new or revised data, and would be responsible for the posting of pending or effective tariff transmittals as well as other relevant documents."[40]

TRA submits that a carrier-administered electronic tariff filing system such as that envisioned by the Commission is CC Docket No. 96-187 would work here. Nondominant IXCs would be permitted to electronically tariff their non-contract-based service offerings, including all pertinent terms and conditions and perhaps a reasonable range of rates within which charges could be increased or decreased without subscriber notice and consent. Carriers would be fully responsible for managing and maintaining their own respective electronic file of tariffs. The Commission would have access to such files, but would need not involve itself in the tariff filing process absent a complaint or like circumstance. Carriers could offer new services or provide for additional price discounts without delay and with little cost or administrative burden. The system would be voluntary, hence the tariffed rates, terms and conditions would govern carrier/customer relationships only if the carrier had not agreed otherwise, in which case the contract between the customer and the carrier would be the governing document.

TRA strongly urges the Commission to consider adoption of a permissive, rather than a mandatory, detariffing policy in conjunction with the creation of a carrier-administered electronic tariff filing system. Such an approach would relieve the Commission of its tariff

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[39] Id. at ¶ 22.

[40] Id.

warehousing duties without burdening nondominant IXCs, and ultimately their customers, with additional regulatory-generated costs and administrative burdens. Permissive electronic filing and maintenance of tariffs would allow nondominant IXCs to continue to operate in a cost-effective, efficient manner. Moreover, because the electronic filing system would be entirely under carrier control, it would produce none of the delays, restraints or abuses that could hinder competition.

C. The Commission Should Refrain From Assessing Filing Fees On Carriers Compelled To Withdraw Tariffs That They Have Been Compelled To File

By Public Notice, DA 96-2155 (released December 19, 1996), the Commission advised nondominant IXCs that filing fees would be exacted for withdrawal of existing tariffs pursuant to its newly-adopted mandatory detariffing policy. In so ruling, the Commission, in justifying this requirement, relied upon its conclusions in implementing its fee collection program that in the event that "the Commission create[d] new policies or the Congress create[d] new laws that would require additional chargeable filings by existing licensees, these additional filings must be accompanied by fees."[41] Moreover, the Commission reiterated its conclusion that Congress did not envision "an exemption from the payment of fees for tariff filings required by changes to the Commission's rules."[42]

TRA submits that the compulsory withdrawal of tariffs at the direction of the Commission is more analogous to a circumstance contemplated by Section 1.1113(a)(4) of the Commission's Rules. Section 1.1113(a)(4) provides for refunds "[w]hen the Commission adopts

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[41] Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd. 947, 950 (1987).

[42] Id. at 977.

new rules that nullify applications already accepted for filing, or a new law or treaty would render useless a grant or other positive disposition of an application."[43] Section 1.1113(a)(4) thus acknowledges that there will be instances in which filings will be rendered unnecessary by regulation, law or treaty and recognizes that it would be inequitable in such instances to retain filing fees. That is precisely what would occur if the Commission declines to reconsider its mandatory detariffing policy. Filings which nondominant IXCs were compelled to file by the Commission would be rendered unnecessary by Commission action. And worse yet, the Commission action was generally opposed by the IXC community.

Equity requires that compulsory tariff withdrawals be exempted from filing fee requirements. Nondominant IXCs should not be penalized for simply doing as they were instructed by the Commission. Nor should they be required to pay fees to take an action which is highly detrimental to their interests. If the Commission firmly believes that a Section 1.1113(a)(4) waiver is not permissable, this circumstance cries out for a little additional dose of forebearance.

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[43] 47 C.F.R. § 1.1113(a)(4).

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to clarify, reconsider and modify its Second Report and Order consistent with this Petition for Clarification/Reconsideration.

Respectfully submitted,

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